

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CLAYTON HORTON,

Plaintiff,

Case No. 1:08-cv-381

v

HON. JANET T. NEFF

MICHIGAN DEPARTMENT OF
CORRECTIONS et al.,

Defendants.

JUDGMENT

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. On June 11, 2008, the Magistrate Judge filed a Report and Recommendation, recommending that the action be dismissed, without prejudice, upon initial screening pursuant to 28 U.S.C. § 1915A(b) on grounds that the complaint failed to state a claim. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Judgment. See FED. R. CIV. P. 58.

First, Plaintiff contends that the Magistrate Judge should have considered his pleadings liberally and should not hold his pleadings to the same standard as those drafted by an attorney. The Magistrate Judge specifically stated that Plaintiff's *pro se* complaint must be read indulgently.

Second, Plaintiff argues that Defendant Alldredge acted under color of state law and the Magistrate Judge was attempting to protect and cover up Defendant Alldredge's incompetency. The Magistrate Judge properly determined that the issue regarding Defendant Alldredge's degree of affiliation with the MDOC did not need to be conclusively determined because Plaintiff's complaint failed to state a claim.

Plaintiff also argues that the MDOC does not have absolute immunity because it acted outside its legal parameters. The Magistrate Judge accurately established that under the Eleventh Amendment, because the state did not waive immunity and Congress did not abrogate the state's immunity by statute, the MDOC is immune from a § 1983 action. The Magistrate Judge correctly cited numerous opinions where the Sixth Circuit held that the MDOC is absolutely immune from such suits.

Fourth, Plaintiff alleges that the Magistrate Judge ignored precedent that applies to the issues Plaintiff presented, which constitutes judicial misconduct. The Magistrate Judge correctly applied the applicable law in making his recommendation.

Plaintiff claims he sufficiently proved both the objective and subjective elements required in order to show an Eighth Amendment violation. He argues that the Magistrate Judge erred in determining that Plaintiff's medical need was not serious and Defendants were not deliberately indifferent to his needs. The Magistrate Judge properly concluded that Plaintiff received medical treatment and any dispute over the inadequacy of that treatment may be addressed under state tort law. The Magistrate Judge also correctly opined that Defendant Alldredge lacked the culpable state of mind sufficient to prove deliberate indifference.

Last, Plaintiff argues that his claim should not be dismissed. The Magistrate Judge dismissed Plaintiff's claim without prejudice so that Plaintiff may file his medical malpractice action in state

court. The Magistrate Judge accurately reasoned that “where federal claims have been dismissed at an early stage of litigation, district courts generally should decline to exercise supplemental jurisdiction over state-law claims” (Report and Recommendation at 7).

For these reasons and because this action was filed *in forma pauperis*, this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Judgment would not be taken in good faith. See *McGore v. Wigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997).

THEREFORE, IT IS ORDERED that the objections (Dkt 15) are DENIED and the Report and Recommendation (Dkt 13) is APPROVED and ADOPTED as the opinion of the Court.

IT IS FURTHER ORDERED that the Complaint (Dkt 1) is DISMISSED pursuant to 28 U.S.C. § 1915A(b), without prejudice, for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that Plaintiff’s Motion for Emergency Request for Counsel (Dkt 10) is DENIED as moot.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C § 1915(a) that an appeal of the Judgment would not be taken in good faith.

Date: October 20, 2008

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge